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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,191	04/15/1999	WILLIAM MEYER SMITH	AT9-98-355	3200
7590	02/02/2004		EXAMINER	
JAMES J MURPHY 5400 RENAISSANCE TOWER 1201 ELM STREET DALLAS, TX 752702199			WILLETT, STEPHAN F	
			ART UNIT	PAPER NUMBER
			2141	11
			DATE MAILED: 02/02/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

PPL

<b>Office Action Summary</b>	Application No. <b>09/292,191</b>	Applicant(s) <b>Smith et al.</b>
	Examiner <b>Stephan Willett</b>	Art Unit <b>2141</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1)  Responsive to communication(s) filed on Dec 3, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-33 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-33 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      6)  Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Based on the applicant's arguments, finality is withdrawn.

***Claim Rejections - 35 USC § 103***

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. with Patent Number 5,920,701 in view of Phaal with Patent Number 6,006,269.

5. Regarding claim(s) 1, 10, 19, Miller teaches determining availability of resources, col. 4, lines 46-55 for network requests from a client as content server itself, or replication server, or scheduler to a content server as a server, col. 4, lines 35-40; col. 5, lines 3-13. Miller teaches

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allocating a scheduled time, col. 7, lines 54-56; col. 10, lines 54-57, to send a network request by the client or scheduler or replication server, col. 12, lines 24-29 for software and data, col. 5, lines 15-19. Miller teaches the invention in the above claim(s) except for explicitly teaching resending a request. In that Miller operates to transfer data over a network, the artisan would have looked to the computer network arts for details of implementing scheduling operations. In that art, Phaal, a related data distributing network teaches “if processing resources of the server are strained, the admission control system defers messages corresponding to new session to a later time”, col.4, lines 48-50 in order to provide requested content. Phaal specifically teaches resending data, col. 16, line 49. Further, Phaal suggests “the motivation for multiple classes can vary”, col. 13, line 43 to incorporate all equivalent types of real time priorities. The motivation to incorporate resending insures that network performance is increased. Thus, it would have been obvious to one of ordinary skill in the art to incorporate resending requests as taught in Phaal into the network scheduling system described in the Miller patent because Miller operates with timely transferring data and Phaal suggests that optimization can be obtained by specifically resending requests. Therefore, by the above rational, the above claim(s) are rejected.

6. Regarding claim(s) 2, 11, 20, 28-30, Miller teaches selecting and notification of a time slot, col. 12, lines 24-29, to said client, col. 6, lines 28-30, the client being the content source.

7. Regarding claim(s) 3, 12, 21, Miller teaches a plurality of time slots, col. 6, lines 15-18.

8. Regarding claim(s) 4, 13, 22, 32, Miller teaches breaking a file into subfiles or data frames, col. 5, lines 19-23.

9. Regarding claim(s) 5-6, 14-15, 23-24, Miller teaches real time servicing of requests as

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emergency coverage, highest priority or during current transmissions, col. 5, lines 57-58, col. 6, lines 52-56, col. 13, lines 27-30.

10. Regarding claim(s) 7, 16, 25, Miller teaches a portion of time reserved for certain requests, col. 7, lines 15-16, col. 8, lines 50-52.

11. Regarding claim(s) 31, Miller teaches Internet use, col. 5, line 1.

12. Regarding claim(s) 8-9, 17-18, 26-27, 33, Miller teaches determining availability of resources, col. 4, lines 46-55 for network requests from a client as content server itself, or replication server, or scheduler to a content server as a server, col. 4, lines 35-40; col. 5, lines 3-

13. Miller teaches allocating a scheduled time, col. 7, lines 54-56; col. 10, lines 54-57, to send a network request by the client or scheduler or replication server, col. 12, lines 24-29 for software and data, col. 5, lines 15-19. Miller teaches the invention in the above claim(s) except for

explicitly teaching resending a request and real & priority portions of a time slot. In that Miller operates to transfer data over a network, the artisan would have looked to the computer network arts for details of implementing scheduling operations. In that art, Phaal, a related data

distributing network teaches “if processing resources of the server are strained, the admission control system defers messages corresponding to new session to a later time”, col.4, lines 48-50 in order to provide requested content. Phaal specifically teaches resending data, col. 16, line 49.

Phaal teaches a time slot portion for real time requests and a time slot portion for a scheduled request as “sessions in-progress” or “held open” slots, col. 5, lines 35-40, col. 13, lines 28-34; col. 14, lines 46-49. Phaal teaches priorities given to certain content similar to the priority given to real time content, col. 9, lines 17-28. Further, Phaal suggests “the motivation for multiple

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classes can vary", col. 13, line 43 to incorporate all equivalent types of real time priorities. The motivation to incorporate resending requests and real & priority time portions insures that network performance is increased. Thus, it would have been obvious to one of ordinary skill in the art to incorporate resending requests and real & priority time portions as taught in Phaal into the network scheduling system described in the Miller patent because Miller operates with timely transferring data and Phaal suggests that optimization can be obtained by specifically resending requests and using real & priority time portions. Therefore, by the above rational, the above claim(s) are rejected.

*Response to Amendment*

13. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

14. Based on the new grounds for rejection the applicant's arguments are moot. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected

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***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the references is suggested. The other references cited teach numerous other ways to perform future scheduling, thus a close review of them is suggested.

16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

sfw

January 26, 2004



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER